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2 **DEPARTMENT OF WATER RESOURCES**

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7 **BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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9 **HEARING IN THE MATTER OF CALIFORNIA**  
10 **DEPARTMENT OF WATER RESOURCES**  
11 **AND UNITED STATES BUREAU OF**  
12 **RECLAMATION REQUEST FOR A CHANGE**  
13 **IN POINT OF DIVERSION FOR CALIFORNIA**  
14 **WATER FIX**

15 **CONSOLIDATED OBJECTION TO**  
16 **SVWU MOTION TO REVISE**  
17 **PETITIONERS' PROPOSED**  
18 **WITNESS PANELS AND EBMUD**  
19 **JOINDER THERETO**

20  
21 **INTRODUCTION**

22 California Department of Water Resources submits its consolidated objection to the  
23 Sacramento Valley Water Users' ("SVWU") unprecedented attempt to interfere with the  
24 Petitioners' presentation of its case-in-chief through the January 11, 2018 filing of a Motion  
25 to Revise Petitioners' Proposed Witness Panels, and the January 11, 2018 East Bay  
26 Municipal Utility District ("EBMUD") joinder thereto.

27 **STATEMENT OF FACTS**

28 On January 11, 2018, only seven days prior to the recommencement of the hearing,  
the Hearing Officers received a request by the SVWU coalition to restructure Petitioners'  
direct testimony presentation and a joinder to that motion by EBMUD. The reasoning as  
set forth by SVWU is that combining operations and modeling witnesses would reduce the  
extent to which witnesses cross-reference each other between witness panels. SVWU  
supports its contention by referencing back to Part 1 of this hearing. Through repeatedly

1 mischaracterizing Petitioners' testimony in Part 2 SVWU asserts an inter-relationship  
2 between the operations testimony and the modeling testimony.

3 Petitioners' operations witness testimonies in Panel 1 discuss the operational  
4 implementation, or operationalization, of the California WaterFix. Panel 1 operational  
5 witnesses do not discuss the details of modeling. Witnesses on Panel 2 include both the  
6 modeling witnesses and biological witnesses. Panel 2 witnesses discuss the updates of  
7 modeling that have occurred through the course of obtaining permits from the US Fish and  
8 Wildlife Service, National Marine Fisheries Service, and the California Department of Fish  
9 and Wildlife, and how those updates to modeling are the basis upon which the biological  
10 analysis is constructed.

11 SVWU correctly states that attorneys for both sides have communicated in this  
12 matter. These communications took place up to December 22, 2017.

### 13 **ARGUMENT**

14 The Department disagrees with the assertions and arguments set forth in SVWU's  
15 motion. SVWU mischaracterizes the content of testimony from both Part 1 and Part 2 of  
16 this hearing, and through that mischaracterization attempts to convince the Hearing  
17 Officers that SVWU understands and can present Petitioners' case-in-chief in a more  
18 effective or efficient manner than the Petitioners. SVWU's proposal, in fact, would result in  
19 more confusion not less, is filed at a time too close to the resumption of the hearing to  
20 provide Petitioners adequate ability to prepare, is not logistically feasible given witness  
21 scheduling constraints that have been built around the existing panel structure as  
22 recognized by the Hearing Officers' notice, and is an unprecedented attempt to interfere  
23 with the direct testimony of the Petitioners.

### 24 **SVWU's Motion Will Not Resolve the Asserted Problem**

25 SVWU's proposal does not minimize the cross-referencing between panels of  
26 witnesses that is cited as the major concern of SVWU because the Petitioners' panel  
27 structure places witnesses with the most inter-related testimony on the same panel.

1 Panel 1 operations witnesses demonstrate that Petitioners' can operationalize, or  
2 implement, the modeling criteria, whatever it may be. Understanding of the operations  
3 witnesses' testimonies do not require a discussion of the modeling assumptions. Rather,  
4 operation witnesses simply accept the modeling provided by modeling witnesses and  
5 demonstrate that it is feasible to implement. To the extent that SVWU has questions for  
6 the operations witnesses that go to the accuracy of the modeling, which is beyond their  
7 direct testimony, the modelers will follow in Panel 2 at which time SVWU may revisit those  
8 questions that Panel 1 witnesses are unable to answer. Panel 2, however, consists of  
9 biological witnesses and modeling witnesses whose testimonies are more interrelated. The  
10 biological analysis presented in this hearing is constructed upon the modeling output.

11 If SVWU's concern truly is to avoid the inter-panel cross-referencing experienced in  
12 Part 1, then removing the modeling witnesses from Panel 2 and placing them on Panel 1  
13 will achieve exactly the opposite result by requiring the biological witnesses to reference  
14 modeling witnesses who are no longer available to answer questions.

15 SVWU cites back to many examples from Part 1 in an attempt to support its motion  
16 and in doing so highlights the fact that SVWU's major focus is to revisit Part 1 issues. The  
17 Department does not believe that restructuring its witnesses is efficient or appropriate  
18 where the goal is to accommodate SVWU's revising of Part 1 issues at the expense of  
19 Petitioners' structure that focuses on Part 2 issues.

20 Furthermore, if SVWU is concerned about inter-panel cross-referencing then  
21 increasing the number of panels from three to four, as it proposes, is also contrary to  
22 resolving that concern. Petitioners created the large central panel specifically in order to  
23 avoid much of the inter-panel cross-referencing experienced in Part 1. As for timing of  
24 cross-examination, the practice of the Hearing Officers in Part 1 was to allow for additional  
25 time where a showing of good cause was made. This worked effectively for Part 1 and  
26 should also work effectively in Part 2, thereby minimizing the concerns expressed by  
27 SVWU and EBMUD about the size of Petitioners' Panel 2.

1 **SVWU's Motion is not Timely**

2 SVWU has known of Petitioners' proposed panel structure since the filing of the  
3 Notices of Intent to Appear, and has also known of the Department's response to their  
4 proposal since December 22, 2017. Rather than raise this issue to the Hearing Officers'  
5 attention in a timely manner, SVWU has purposely delayed until a point where Petitioners'  
6 will be placed at a distinct disadvantage. Petitioners' witnesses would be required to  
7 present direct testimony in a sequence unfamiliar to them and with different witnesses  
8 available to answer questions to the panels. This intentional delay argues against granting  
9 SVWU's motion.

10 **SVWU's Motion is not Logistically Feasible**

11 As communicated to SVWU, some witnesses have legitimate scheduling constraints  
12 and the panel structure set forth in the Department's Notice of Intent presents witnesses in  
13 a manner consistent with the practice of the Hearing Officers in Part 1. Restructuring the  
14 witness panels in the manner proposed by SVWU will produce undue hardship on the  
15 witnesses due to revised flights, hotel, and work schedules. Despite the Hearing Officers'  
16 ruling of not accepting witness unavailability, the Department cannot guarantee that  
17 witnesses could be made available on the schedule proposed by SVWU.

18 **SVWU's Motion in Unpresented**

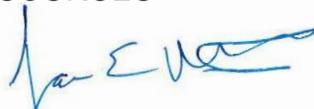
19 Although SVWU cites to Section 648.5 (a) of the State Water Resource Control  
20 Board regulations that state that the Hearing Officers may conduct the hearing in a manner  
21 they deem most suitable, it will be an exceptional and unprecedented case to have the  
22 Hearing Officers direct the Petitioners on the order of witnesses in the case-in-chief direct  
23 testimony. For the reasons stated above, the Department does not believe that the SVWU  
24 restructuring would satisfy the goals enumerated. Rather, retaining the Petitioners' witness  
25 structure is the best way to satisfy Section 648.5(a) and secure relevant information  
26 expeditiously without unnecessary delay and expense to the parties and to the Board.  
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28

1 **CONCLUSION**

2 For the reasons state above, the Department strongly opposes SVWU’s attempt to  
3 restructure the direct testimony of the Petitioners.

4 Dated: January 17, 2018

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES

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